

February 16, 2010

Mayor's Biennial Ethics Review Panel Participants  
c/o City Clerk Lee Price  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

Re: Closing a Loophole in Lobbyist Registration and Disclosure

Dear Ethics Review Panel Participants:

A lobbyist by any other name is a lobbyist just the same. However, in San Jose, there has been an unique exemption for lobbyist registration for 501(c)(3) nonprofit organizations. In almost all other major California cities, these groups would be required to register under the ordinance.

A 501(c)(3) organization would be required to register if it met the lobbying threshold in Oakland or San Francisco. Sacramento and San Diego require these organizations to register as well. Los Angeles' exemption is incredibly narrow: any 501(c)(3) organization that receives government funding and provides direct representation services to indigent persons free of charge is exempt from registration.

The public policy problem with this exemption is that it created a loophole. Now that the loophole has been demonstrated, others can use it. Any organization required to register under the lobbying ordinance can create a 501(c)(3) organization, conduct its lobbying activity through its 501(c)(3), and not report that lobbying activity.

In my amended and restated Biennial Ethics Review Memo, six organizations were mentioned that had 501(c)(3) organizations. They are:

- Home Builders Association of Northern California
- San Jose Downtown Association
- San Jose Silicon Valley Chamber of Commerce
- Santa Clara County Association of Realtors
- Silicon Valley Leadership Group
- South Bay Labor Council

There is nothing stopping these groups from pursuing their lobbying action through their 501(c)(3) organization because it is perfectly legal to do so. For example, a real estate developer could set up a 501(c)(3) organization funded through tax-exempt donations to create public policy analysis about developing past the City green-line and the economic development that

would create – and not be subject to the City's lobbying ordinance. The only change proposed is that now these 501(c)(3) organizations would have to report any lobbying activity they conduct in the City of San Jose, if they meet the hours of lobbying threshold.

Just because an organization or person who conducts lobbying in the City of San Jose does work that is seen as beneficial to the community does not mean that the organization or person should not be subject to the lobbying ordinance. We require lobbyists to register and disclose their activities "in the spirit of open and transparent government to allow the public to know and better understand the relationship between its elected officials, lobbyists and lobbyist's clients" (Title 12.12.010)

From the Mercury News Editorial: *Lobbyist or not, it's disclosure that matters:*

"Like it or not, the lobbyist ordinance is San Jose's mechanism for requiring special interests to report contacts with city officials, so that it's clear to the public who is influencing whom... The semantic problem is rooted in the origin of the city lobbying ordinance. It originally was aimed at lobbyists for hire... But as the lobbying law was crafted, it became clear that these were not the only people whose influence should be disclosed. Others included groups like the labor council and the chamber as well as business owners, such as developers. These people generally hate registering as lobbyists. They say they're doing what they believe in, not hiring out to anyone who pays them. Lawyers say that when they visit council members, they're representing clients in a legal capacity, not as lobbyists. Professional engineers and planners say they're consultants, not lobbyists, because clients hire them for their technical expertise. But they have to register anyway."

I would also add, that if being asked to register under the City's lobbying ordinance is a form of "punishment," it is a "punishment" shared with a former City Attorney, a former Mayor, and many other members of the public who meet the specified threshold of lobbying activity.

The proposed change would require the registration of officers and employees of a 501(c)(3) organization engaged in lobbying activity if it is controlled by an entity that is already required to register as a lobbying organization. All other 501(c)(3) organizations would remain exempt.

The definition of control would be:

- a. The other entity directly or indirectly appoints or selects members of the Board of Directors, officers or employees of the nonprofit; or
- b. The same person or organization manages or directs the nonprofit and the other entity;
- c. The other entity and nonprofit commingle assets, employees or expenses.

Public policy proposals are not created in a vacuum. Most public policy is created in response to specific problems. It is my hope that you will see that this proposal is based on the principle of closing a significant loophole and that it applies equally and fairly to all types of organizations.

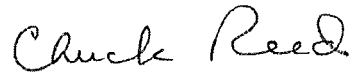
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My recommendation is being proactive about closing a loophole that could be exploited in the future. Good public policy doesn't only respond to problems but anticipates them and corrects them before damage is done.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Reed".

Chuck Reed  
Mayor